

(1) The judge advocate who reviewed the case recommends corrective action;

(2) The sentence approved by the convening authority includes dismissal, a dishonorable or bad-conduct discharge, or confinement for more than 6 months; or

(3) Such action is otherwise required by regulations of the Secretary concerned.

(f) *Action by officer exercising general court-martial jurisdiction.*

(1) *Action.* The officer exercising general court-martial jurisdiction who receives a record under subsection (e) of this rule may—

(A) Disapprove or approve the findings or sentence in whole or in part;

(B) Remit, commute, or suspend the sentence in whole or in part;

(C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) Dismiss the charges.

#### Discussion

See R.C.M. 1113 concerning when the officer exercising general court-martial jurisdiction may order parts of the sentence executed. See R.C.M. 1114 concerning orders promulgating the action of the officer exercising general court-martial jurisdiction. See also Appendix 16 (Forms for actions) and Appendix 17 (Forms for court-martial orders).

(2) *Rehearing.* If the officer exercising general court-martial jurisdiction orders a rehearing, but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) *Notification.* After the officer exercising general court-martial jurisdiction has taken action, the accused shall be notified of the action and the accused shall be provided with a copy of the judge advocate's review.

(g) *Forwarding following review under this rule.*

(1) *Records forwarded to the Judge Advocate General.* If the judge advocate who reviews the case under this rule states that corrective action is required as a matter of law, and the officer exercising general court-martial jurisdiction does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and the action thereon shall be forwarded to

the Judge Advocate General concerned for review under R.C.M. 1201(b)(2).

(2) *Sentence including dismissal.* If the approved sentence includes dismissal, the record shall be forwarded to the Secretary concerned.

#### Discussion

A dismissal may not be ordered executed until approved by the Secretary or the Secretary's designee. See R.C.M. 1206.

(3) *Other records.* Records reviewed under this rule which are not forwarded under subsection (g)(1) of this rule shall be disposed of as prescribed by the Secretary concerned.

#### Discussion

A dismissal may not be ordered executed until approved by the Secretary or the Secretary's designee under R.C.M. 1206.

### Rule 1113. Execution of sentences

(a) *In general.* No sentence of a court-martial may be executed unless it has been approved by the convening authority.

#### Discussion

An order executing the sentence directs that the sentence be carried out. Except as provided in subsections (d)(2), (3), and (5) of this rule, no part of a sentence may be carried out until it is ordered executed.

(b) *Punishments which the convening authority may order executed in the initial action.* Except as provided in subsection (c) of this rule, the convening authority may order all or part of the sentence of a court-martial executed when the convening authority takes initial action under R.C.M. 1107.

**(c) Punishments which the convening authority may not order executed in the initial action.**

(1) *Dishonorable or a bad-conduct discharge.* Except as may otherwise be prescribed by the Secretary concerned, a dishonorable or a bad-conduct discharge may be ordered executed only by:

(A) The officer who reviews the case under R.C.M. 1112(f), as part of the action approving the

sentence, except when that action must be forwarded under R.C.M. 1112(g)(1); or

(B) The officer then exercising general court-martial jurisdiction over the accused.

A dishonorable or bad-conduct discharge may be ordered executed only after a final judgment within the meaning of R.C.M. 1209 has been rendered in the case. If on the date of final judgment a servicemember is not on appellate leave and more than 6 months have elapsed since approval of the sentence by the convening authority, before a dishonorable or a bad-conduct discharge may be executed, the officer exercising general court-martial jurisdiction over the servicemember shall consider the advice of that officer's staff judge advocate as to whether retention of the servicemember would be in the best interest of the service. Such advice shall include the findings and sentence as finally approved, the nature and character of duty since approval of the sentence by the convening authority, and a recommendation whether the discharge should be executed.

(2) *Dismissal of a commissioned officer, cadet, or midshipman.* Dismissal of a commissioned officer, cadet, or midshipman may be approved and ordered executed only by the Secretary concerned or such Under Secretary or Assistant Secretary as the Secretary concerned may designate.

### **Discussion**

See R.C.M. 1206(a) concerning approval by the Secretary.

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(3) *Sentences extending to death.* A punishment of death may be ordered executed only by the President.

### **Discussion**

See R.C.M. 1207 concerning approval by the President.

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(d) *Other considerations concerning the execution of certain sentences.*

(1) *Death.*

(A) *Manner carried out.* A sentence to death which has been finally ordered executed shall be carried out in the manner prescribed by the Secretary concerned.

(B) *Action when accused lacks mental capacity.* An accused lacking the mental capacity to understand the punishment to be suffered or the reason for imposition of the death sentence may not be put to death during any period when such incapacity exists. The accused is presumed to have such mental capacity. If a substantial question is raised as to whether the accused lacks capacity, the convening authority then exercising general court-martial jurisdiction over the accused shall order a hearing on the question. A military judge, counsel for the government, and counsel for the accused shall be detailed. The convening authority shall direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining whether the accused understands the punishment to be suffered and the reason therefore. The military judge shall consider all evidence presented, including evidence provided by the accused. The accused has the burden of proving such lack of capacity by a preponderance of the evidence. The military judge shall make findings of fact, which will then be forwarded to the convening authority ordering the hearing. If the accused is found to lack capacity, the convening authority shall stay the execution until the accused regains appropriate capacity.

### **Discussion**

A verbatim transcript of the hearing should accompany the findings of fact.

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(2) *Confinement.*

(A) *Effective date of confinement.* Any period of confinement included in the sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but the following shall be excluded in computing the service of the term of confinement:

(i) Periods during which the sentence to confinement is suspended or deferred;

(ii) Periods during which the accused is in custody of civilian authorities under Article 14 from the time of the delivery to the return to military custody, if the accused was convicted in the civilian court;

(iii) Periods during which the accused is in custody of civilian or foreign authorities after the

convening authority, pursuant to Article 57(e), has postponed the service of a sentence to confinement.

### Discussion

The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action.

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(iv) Periods during which the accused has escaped or is absent without authority, or is absent under a parole which proper authority has later revoked, or is erroneously released from confinement through misrepresentation or fraud on the part of the prisoner, or is erroneously released from confinement upon the prisoner's petition for a writ of habeas corpus under a court order which is later reversed; and

(v) Periods during which another sentence by court-martial to confinement is being served. When a prisoner serving a court-martial sentence to confinement is later convicted by a court-martial of another offense and sentenced to confinement, the later sentence interrupts the running of the earlier sentence. Any unremitted remaining portion of the earlier sentence will be served after the later sentence is fully executed.

(B) *Nature of the confinement.* The omission of "hard labor" from any sentence of a court-martial which has adjudged confinement shall not prohibit the authority who orders the sentence executed from requiring hard labor as part of the punishment.

(C) *Place of confinement.* The authority who orders a sentence to confinement into execution shall designate the place of confinement under regulations prescribed by the Secretary concerned, unless otherwise prescribed by the Secretary concerned. Under such regulations as the Secretary concerned may prescribe, a sentence to confinement adjudged by a court-martial or other military tribunal, regardless whether the sentence includes a punitive discharge or dismissal and regardless whether the punitive discharge or dismissal has been executed, may be ordered to be served in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same

discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated. When the service of a sentence to confinement has been deferred and the deferment is later rescinded, the convening authority shall designate the place of confinement in the initial action on the sentence or in the order rescinding the deferment. No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces. The Secretary concerned may prescribe regulations governing the place and conditions of confinement.

### Discussion

See R.C.M. 1101(c) concerning deferment of a sentence to confinement.

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(3) *Confinement in lieu of fine.* Confinement may not be executed for failure to pay a fine if the accused demonstrates that the accused has made good faith efforts to pay but cannot because of indigency, unless the authority considering imposition of confinement determines, after giving the accused notice and opportunity to be heard, that there is no other punishment adequate to meet the Government's interest in appropriate punishment.

(4) *Restriction; hard labor without confinement.* When restriction and hard labor without confinement are included in the same sentence, they shall, unless one is suspended, be executed concurrently.

(5) *More than one sentence.* If at the time forfeitures may be ordered executed, the accused is already serving a sentence to forfeitures by another court-martial, the authority taking action may order that the later forfeitures will be executed when the earlier sentence to forfeitures is completed.

## Rule 1114. Promulgating orders

(a) *In general.*

(1) *Scope of rule.* Unless otherwise prescribed by the Secretary concerned, orders promulgating the result of trial and the actions of the convening or higher authorities on the record shall be prepared, issued, and distributed as prescribed in this rule.

(2) *Purpose.* A promulgating order publishes the